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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/722,493

11/28/2003

Tse-Hsien Liao

MR3003-71

7671

4586 7590 03/06/2009

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EXAMINER

NGUYEN, TRAN N

ART UNIT

PAPER NUMBER

3626

NOTIFICATION DATE

DELIVERY MODE

03/06/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptoactions@rklpatlaw.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/722,493	<b>Applicant(s)</b> LIAO, TSE-HSIEN	
	<b>Examiner</b> Tran Nguyen	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Notice to Applicant***

This communication is in response to the communication filed 03/05/2004.

Pending claim(s): 1-27.

***Priority***

Acknowledgment is made of Applicant's claim for priority to application 091134959 filed on 12/02/2002 in Taiwan.

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Objections***

Claims 1-3, 5, 7-12, 21-24, 26-27 are objected to because of the following informalities: these claims recite "said" or "the" "combination thereof". This limitation lacks proper antecedent basis.

Appropriate correction is requested.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim(s) 1-13, 16, 18, 22, 25-27 is/are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claims 1-13, 16, 18, 22, 25-27, these claims recite “means” limitations, but these limitations are modified by some structure, material, or acts recited in the claim. It is unclear whether the recited structure, material, or acts are sufficient for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph, because it is unclear if the recite structure is sufficient structure for performing the functionality of the “means” limitations.

If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that the phrase “means for” or “step for” is clearly not modified by sufficient structure, material, or acts for performing the claimed function.

If applicant does not wish to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that it will clearly not be a means (or step) plus function limitation (e.g., deleting the phrase “means for” or “step for”).

Additionally, assuming *arguendo* that these limitations invoke 35 USC 112, sixth paragraph, the written description fails to disclose the corresponding structure, material, or acts for the claimed function.

Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132(a)).

If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

(a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or

(b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

Additionally, the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed function such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function.

To avoid purely functional claiming in cases involving computer-implemented inventions, we have "consistently required that the structure disclosed in the

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specification be more than simply a general purpose computer or microprocessor."

*Aristocrat Techs. Austl. Pty Ltd. v. Int'l Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir.

2008). "Because general purpose computers can be programmed to perform very different tasks in very different ways, simply disclosing a computer as the structure

designated to perform a particular function does not limit the scope of the claim to 'the corresponding structure, material, or acts' that perform the function, as required by

section 112 paragraph 6." *Id.* "Thus, in a means-plus-function claim 'in which the

disclosed structure is a computer, or microprocessor, programmed to carry out an

algorithm, the disclosed structure is not the general purpose computer, but rather the

special purpose computer programmed to perform the disclosed algorithm.'" *Id.* (quoting

*WMS Gaming, Inc. v. Int'l Game Tech.*, 184 F.3d 1339, 1349 (Fed. Cir. 1999)).

Consequently, a means-plus-function claim element for which the only disclosed

structure is a general purpose computer is invalid if the specification fails to disclose an

algorithm for performing the claimed function. See *id.* at 1337-38.

Accordingly, the specific computer and accompanying algorithm has not been disclosed.

Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it clearly links or associates the corresponding structure, material, or acts to the claimed function without introducing any new matter (35 U.S.C. 132(a)); or

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(c) State on the record where the corresponding structure, material, or acts are set forth in the written description of the specification that perform the claimed function.

For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

Additional clarification is requested.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim(s) 1-27 is/are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (5832448).

As per claim 1, Brown teaches a system (Title, Abstract) capable of monitoring (reads on “inspection”) health (Abstract), comprising:

(a) a computer (reads on "a main board having a central processing unit provided therein") (Figure 1 label 36) capable of communicating with (reads on “electrically connected”):

(i) a monitoring device (reads on “at least one signal receiver”) (Figure 1 label 42);

- (ii) a patient unit capable of communicating with the monitoring device (reads on "peripheral device connector") (Figure 1 label 38);
  - (iii) memory (Figure 1 label 38);
  - (iv) a CPU (reads on "signal processor") (Figure 1 label 38);
  - (v) memory (reads on "register") (Figure 1 label 38);
  - (vi) an overview application (reads on "comparator") (Figure 1 label 20);
  - (vii) a modem (reads on "decoder") (Figure 1 label M2);
  - (viii) software capable of processing a sample of data (reads on "sample data handler") (Figure 3);
  - (ix) software capable of generating a graph (reads on "graph processor") (Figure 3);
  - (x) software capable of alerting physicians as to the noncompliance status of patients (reads on "alarm") (Figure 3);
  - (xi) wherein the patient unit is capable of displaying data (Figure 1 label 40) and entering data through a modem (reads on "a data inputting means") (Figure 1 label M2) via a communication network (Figure 1 label 34);
- (b) a plurality of monitoring devices (reads on "health measurement devices") (Figure 1 label 42), wherein each monitoring device is capable of measuring patient data (reads on "a specific health signal of a living body") (Figure 1 label 42), processing the monitored data (reads on "a function processor") (Figure 2 label 50), and sending the monitored data to a master patient database (Figure 2) over a communication network (Figure 1 label 34);



(c) wherein the patient site computer is capable of storing (reads on “integrating”) (Figure 2 label 50), processing the stored data (Figure 1 label 36), and thereafter, storing in the memory of the patient site computer (also reads on “sample data handler”) (Figure 1 label 36).

As per claim 2, Brown teaches that the system is capable of identifying the patient to the patient site computer (reads on “identity data of said living body”) (Figure 1 label 44, Figure 3 label 70) and storing the patient data in the patient site computer (Figure 1 label 36).

As per claim 3, Brown teaches:

(a) blood pressure (reads on “sphygmomanometer”) (column 5 line 35-36);

(f) blood glucose (reads on “blood sugar testing instrument”) (column 5 line 35).

Insofar as the remainder of the claim is concerned, the applied art need not teach these limitations in view of the optional limitations recited therein.

As per the set of claim(s): 4, 5, 6, this set of claim is rejected for substantially the same rationale as applied to the rejection of the set of claim(s): 1, 1, 2, respectively, and incorporated herein.

As per claim 7, Brown teaches modem (reads on “wired signal receiver”) (Figure 1 label M2).

Insofar as the remainder of the claim is concerned, the applied art need not teach these limitations in view of the optional limitations recited therein.

As per the set of claim(s): 8, this set of claim is rejected for substantially the same rationale as applied to the rejection of the set of claim(s): 3, respectively, and incorporated herein.

As per claim 9, Brown teaches displaying a blinking icon (reds on "light alarm") (Figure 3).

Insofar as the remainder of the claim is concerned, the applied art need not teach these limitations in view of the optional limitations recited therein.

As per the set of claim(s): 10, this set of claim is rejected for substantially the same rationale as applied to the rejection of the set of claim(s): 1, respectively, and incorporated herein.

As per claim 11, Brown teaches:

- (a) a personal computer (column 4 line 51);
- (c) a personal digital assistant (column 4 line 55).

Insofar as the remainder of the claim is concerned, the applied art need not teach these limitations in view of the optional limitations recited therein.

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As per the set of claim(s): 12, this set of claim is rejected for substantially the same rationale as applied to the rejection of the set of claim(s): 7, respectively, and incorporated herein.

As per claim 13, Brown teaches that the system is capable of sending data to a clinician workstation (reads on “a specific workstation”) via the communication network (Figure 1 label 22).

As per the set of claim(s): 14, 15, 16, 17, 18, this set of claim is rejected for substantially the same rationale as applied to the rejection of the set of claim(s): 1, 1, 2, 1, 1, respectively, and incorporated herein.

As per claim 19, Brown teaches a control value (reads on “reference sample data”) (Figure 6 label 206).

As per the set of claim(s): 20, 21, 22, 23, 24, this set of claim is rejected for substantially the same rationale as applied to the rejection of the set of claim(s): 19, 9, 13, 3, 11, respectively, and incorporated herein.

As per claim 25, this claim is rejected for substantially the same rationale as applied to claim 1 above, and incorporated herein.

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In particular, Examiner considers the processing of monitored data and comparing with a control value (Figure 6) to be a form of “decryption function” because raw data is parsed, processed, and analyzed with respect to some external control value.

As per the set of claim(s): 26, 27, this set of claim is rejected for substantially the same rationale as applied to the rejection of the set of claim(s): 9, 3, respectively, and incorporated herein.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tran (Ken) N. Nguyen whose telephone number is 571-270-1310. The examiner can normally be reached on Monday - Friday, 9:00 am - 5:00 pm Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, C. Luke Gilligan can be reached on 571-272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. N./

Examiner, Art Unit 3626

03/01/2009

/C. Luke Gilligan/

Supervisory Patent Examiner, Art Unit 3626